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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Requests of U S West Communications, ) CC Docket No. 97-90  
Inc., for Interconnection Cost ) CCB/CPD 97-12  
Adjustment Mechanisms )

### COMMENTS

Sprint Corporation hereby respectfully submits its comments in support of the above-captioned "Petition for Declaratory Ruling and Contingent Petition for Preemption" filed on February 20, 1997 by Electric Lightwave, Inc., McLeodUSA Telecommunications Services, Inc., and Nextlink Communications, L.L.C. ("Petitioners").

#### I. INTRODUCTION AND BACKGROUND.

U S West has filed with the 14 state public utility commissions in its service territory a request for authorization to assess monthly Interconnection Cost Adjustment Mechanism ("ICAM") surcharges on competitive local exchange carriers ("CLECs") for interconnection (approximately \$144,000), unbundled network elements (\$35,000), and resale (\$9,000) (Petition, p. 3). Alternatively, U S West has proposed that these costs be recovered directly from end users in the form of a \$.76 per month line charge (*id.*, citing U S West's filing in the State of Washington). These surcharges are designed to recover certain one-time "extraordinary" costs associated with network upgrades and rearrangements needed to comply with the local competition require-

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ments of the Telecommunications Act of 1996.<sup>1</sup> U S West states that these costs are not otherwise recoverable under Section 252(d) of the Act.

Petitioners have requested that the Commission issue a declaratory ruling that U S West's proposed ICAM surcharges violate Section 252(d) of the Telecommunications Act of 1996, which requires that the rates for interconnection and network elements be cost-based, nondiscriminatory and otherwise just and reasonable; and Section 253, which prohibits state or local statutes and regulations which constitute barriers to entry to new market entrants (p. 4). To the extent that any state PUC allows U S West to assess the ICAM surcharge, Petitioners request that the Commission preempt such state decision.

Sprint supports Petitioners' request for a declaratory ruling. One of the primary goals of the Telecommunications Act of 1996 and of the FCC's implementing rules and regulations is to foster competition in telecommunications markets. Both Congress and the Commission recognized that incumbent local exchange carriers ("ILECs") have an economic interest in preserving the status quo by impeding the entry of new competitors into the local mar-

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<sup>1</sup>These costs cover such items as "extensions and/or modifications of network facilities or operational support systems, including data bases and electronic interfaces, (hereinafter "network rearrangements"), all of which are or will be necessary to provide USWC's competitors with interconnection, access to unbundled network elements and the ability to resell USWC retail services" (see U S West's Application for the Interconnection Cost Adjustment Mechanism filed with the Public Service Commission of Utah on January 3, 1997, p. 2).

ket. Therefore, Congress mandated that ILECs allow new competitors to provide local service -- through interconnection with the ILEC's network, use of the ILEC's unbundled network elements, or resale of retail ILEC services -- at just and reasonable rates which are cost-based and nondiscriminatory. As discussed below, the FCC's implementing rules already provide for the recovery of an ILEC's just and reasonable costs of providing interconnection and unbundled network access. U S West's ICAM surcharges are discriminatory, discourage local market entry by potentially more efficient new competitors, and have not been shown to be cost-based. The instant petition therefore should be granted, and the Commission should declare that U S West's ICAM surcharges violate the 1996 Act and are contrary to the public interest.

**II. U S WEST'S PROPOSED ICAM SURCHARGES ARE UNNECESSARY, DISCRIMINATORY AND ANTI-COMPETITIVE.**

The ICAM surcharges are unnecessary because the TELRIC costing standard adopted by the Commission provides U S West and other ILECs with an adequate opportunity to recover the costs associated with interconnection and unbundled network elements. Costs not directly attributable to interconnection or unbundled network elements are general network upgrades, and attempts to recover such costs entirely from CLECs is violative of Section 252(d)(1) and constitutes the type of market entry barrier which state, local and federal regulators are obliged to prevent or remove under section 253.

**A. The 1996 Act and the FCC's Implementing Rules Provide for Recovery of Just and Reasonable Costs.**

In its ICAM petitions before the state commissions, U S West has asserted that there is no mechanism in place to reimburse it for the start-up costs of the network upgrades needed to provide interconnection and unbundled network access to CLECs. U S West is mistaken. The TELRIC rate standard adopted by the Commission affords ILECs the opportunity to recovery their just and reasonable costs of providing interconnection and unbundled network elements. It is simply not the case that U S West will be unable to recover its network upgrade costs absent adoption of its proposed ICAM surcharges.

In interpreting Section 252(d)(1) of the Act, the Commission found that "the use of a forward-looking, economic, cost-based pricing methodology, including a reasonable allocation of legitimate joint and common costs, will permit incumbent LECs the opportunity to earn a reasonable return on their investment in network elements."<sup>2</sup> The Commission also concluded that TELRIC costs should reflect "[o]ne-time costs associated with the acquisition of capital goods...amortized over the economic life of the assets using the user cost of capital" (*id.*, citing AT&T, para. 686).

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<sup>2</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15855 (para. 701) (1996). The legality of the TELRIC costing standard is, of course, currently on appeal before the Eighth Circuit Court. As Petitioners point out (Petition, p. 13), the issue of whether TELRIC rates represent an unconstitutional taking under the Fifth Amendment is best addressed in the appeals case rather than in a multitude of individual state regulatory proceedings.

Because ILECs have the opportunity to recovery their just and reasonable costs in the TELRIC-based interconnection and unbundled network element rates, U S West's proposed ICAM surcharges are superfluous.

Some (unspecified) portion of U S West's claimed ICAM costs are associated with providing electronic access to its operational support systems. The Commission has already found that OSS access using electronic interfaces is an unbundled network element (*id.*, para. 516). Therefore, U S West's claimed ICAM expenses should be reduced by any costs (direct or common) attributable to OSS access or to any other unbundled network element or interconnection service.

**B. Certain Interconnection Costs Must Be Borne By the ILEC Itself.**

U S West has claimed that its proposed ICAM surcharges are economically rational because they recover costs from the cost-causer -- the CLECs. As discussed above, TELRIC-based interconnection and unbundled network element rates paid by CLECs provide precisely the cost recovery vehicle U S West has sought. It is not clear what legitimate interconnection costs remain once U S West has subtracted from its ICAM cost pool the revenues earned from interconnection, unbundled network element, and resale rates paid by CLECs. If U S West believes that other costs still remain, it must provide detailed information on such costs and full justification as to why existing rate elements do not recover such costs.

It is clear that certain costs relating to provision of access to the ILEC network by CLECs must be borne by the ILEC. For example, in those jurisdictions adopting a TELRIC-type cost standard, ILECs may not recover costs in excess of the TELRIC rates from the CLECs. To allow recovery of historical embedded costs would render the TELRIC costing standard meaningless.

U S West and other ILECs also should bear all of the expense associated with enabling their customers to communicate with CLEC customers since this is a part and thus a cost of providing local service. The Commission appeared to recognize this, stating that in "meet point" interconnection arrangements made pursuant to section 251(c)(2), "the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement" (*id.*, para. 553), *i.e.*, each party pays its own costs of building out the facilities to the point of interconnection.

Competition in the local services market is expected to benefit end users generally in the form of lower prices, higher quality, and a wider variety of services. To the extent that an ILEC incurs network upgrades associated with the introduction of local competition not otherwise recovered from allowable interconnection, unbundled network element or resale rates, and if the appropriate regulatory body approves recovery of such costs,<sup>3</sup> such

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<sup>3</sup>Sprint is not aware of any network upgrades which would fall in this category, nor has U S West has provided examples of such

*Footnote continued on next page*

upgrades are analogous to the equal access recovery expenses incurred after divestiture to promote competition in the interexchange market. The Commission rightly concluded there that because competition benefited consumers generally, all IXC's, including the monopoly incumbent AT&T, would be required to contribute to the recovery of equal access costs. This same reasoning is equally applicable today. Because customers generally benefit from the introduction of competition in the local services market, competitive neutrality demands that the ILEC accept responsibility for a reasonable share of the costs of upgrading and reconfiguring its network.

**C. U S West's ICAM Proposal Is Discriminatory and Will Discourage Competitive Entry Into the Local Market.**

U S West asserted in its Utah PSC filing that it will incur between \$500 million to \$1 billion in network rearrangement costs between 1996 - 1999. Requiring CLECs to finance costs of this magnitude places them at a significant disadvantage *vis-à-vis* the incumbent LEC: not only must the CLEC pay for its own network costs (for which the CLEC is not guaranteed recovery), but a substantial portion of the ILEC's network costs as well. To the extent that this \$500 million to \$1 billion estimate includes costs other than those properly recovered in the interconnection, unbundled network element, and resale rates, U S West's ICAM proposal both is discriminatory and discourages market entry by an efficient competitor.

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upgrades. Therefore, any such expenses claimed by an ILEC should  
*Footnote continued on next page*

In the *Local Number Portability Order*, the Commission explained that a competitively neutral cost recovery mechanism "should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber," and "should not have a disparate effect on the ability of competing service providers to earn a normal return."<sup>4</sup> In the *Second Interconnection Report and Order*, the Commission also found that competitive neutrality in the recovery of number administration costs required contributions from all telecommunications carriers based on each contributors' gross telecommunications revenues less payments to other telecommunications carriers.<sup>5</sup> Under these standards, U S West's proposed ICAM surcharges cannot be considered to be competitively neutral. Furthermore, because such surcharges place CLECs at an artificial cost disadvantage, such surcharges will discourage local market entry by competitors which are otherwise equally or more efficient than the incumbent.

### **III. U S WEST HAS FAILED TO JUSTIFY THE REASONABLENESS OF THE FORECASTED EXPENDITURES OR OF THE PROPOSED SURCHARGES.**

Section 252(d)(1) of the Act requires that the rates for interconnection and unbundled network elements be cost-based.

be carefully evaluated on a case-by-case basis.

<sup>4</sup> *Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, released July 2, 1996, para. 21.

<sup>5</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order* released August 8, 1996, paras. 342-343.



Because U S West has failed to prove that its rates satisfy the requirements of this section, its proposed ICAM surcharges must be rejected.

As noted above, U S West has estimated that it will incur between \$500 million to \$1 billion in network rearrangements costs between 1996 - 1999. Insofar as Sprint is aware, U S West has failed to provide full public documentation of these estimates or a detailed description of the types of network upgrades to be financed by such estimates. Moreover, U S West does not seem to have made any attempt to reduce the costs it seeks to recover from CLECs by an amount associated with benefits which U S West itself derives from the network upgrades.<sup>6</sup> Thus, there is no way to assess the reasonableness of the forecasted expenditures or of the proposed rates. If any ICAM surcharge is allowed, it must be fully documented, cost justified, and not duplicative of any other rate element. Given the purported level of these network upgrade costs and the likely impact on the development of local competition such costs will have, a detailed analysis of U S West's cost information is critical.

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<sup>6</sup>For example, U S West will derive some benefit from upgrades to its OSS to the extent that such upgrades allow it to process its own orders, respond to repair requests, render bills, etc., more quickly and efficiently (e.g., on an automated rather than manual basis). Similar productivity savings may accrue to the ILEC from other of its network upgrades.

Respectfully submitted,

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April 3, 1997

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 3rd day of April, 1997 to the below-listed parties:

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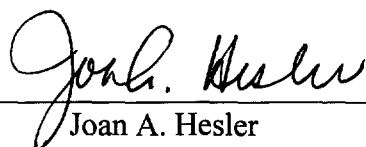
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